IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 4713 OF 2004

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

CORAM : B.P. DHARMADHIKARI, J.
JANUARY 22, 2007.

Heard Shri Khanzode, learned counsel for the petitioners and Shri Shams, learned counsel for the respondent.

The matter was heard by this Court on 18.1.2007 and again today. Shri Khanzode, learned counsel contends that the petitioners – tenants could not get opportunity to cross examine the respondent – landlord and also could not get opportunity to lead evidence in defence. He contends that bonafide need has not been established. He further states that the respondent – landlord has got alternate premises at Kalmeshwar and Lohar Oli at Nagpur and he does not require suit premises at all. He contends that this absence of necessity is also apparent from the fact that the appellate authority has passed orders on 30.8.2004 and the respondent – landlord has not instituted eviction suit. He further states

that it is reliably learnt that respondent has entered into further agreement with some other person and he is trying to either sale or lease it afresh at higher rate. He wishes to rely upon several judgments to contend that mere desire expressed by the landlord is not sufficient to hold that bonafide need is established.

Shri Shams, learned counsel for the respondent – landlord contends that the petitioner was given opportunity by the Rent Controller but that opportunity was not availed of. He further contends that even before the Appellate Authority, no documents were filed by the petitioners to justify any of their arguments and he further argues that no such documents are produced along with writ petition. He contends that the petitioner is only trying to take advantage of technicality. Lastly, he states that after order dated 30.8.2004, writ petition was filed before this Court and therefore, the respondent has not taken further steps in the matter.

I have perused both the orders and also the records. The petitioners have not produced either before the Rent Controller or before the Appellate Authority or even before

this Court any document to show that respondent – landlord has got any alternate accommodation either at Kalmeshwar or at Lohar Oli at Nagpur. The petitioners have not filed any documents to show that the respondent has entered into any agreement with third person in relation to suit property. The petitioners did not move Rent Controller seeking permission to cross examine the landlord and also did not seek permission to lead evidence in defence. On the contrary when the matter was listed for arguments before the Rent Controller, the petitioners participated in those arguments and addressed the Rent Controller finally.

In the circumstances, it is apparent that the petitioners are only trying to beat around the bush without any challenge on merits. As argued by the learned counsel for the respondent, the petitioners are taking advantage of the technicalities. I find that the petitioners waived opportunity available to them before the Rent Controller and participated in final arguments without seeking either to cross examine the respondent or without seeking leave to lead evidence in defence. The Rent Controller as well as

appellate authority have accepted the unchallenged testimony of respondent – landlord. There is no perversity or jurisdictional error. Writ Petition is dismissed. No order as to costs.

JUDGE

*GS.